**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Criminal Appeal No. 352 of 2006**

**Date of decision 17.4.2007**

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**Tilak Raj** **…Appellant.**

**Versus**

**State of H.P.** **…Respondent.**

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***Coram***

**The Hon'ble Mr. Justice : Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the appellant : Mr. Lalit Sharma, Advocate.**
**For the respondent : Mr. Ashok Chaudhary, Addl. A.G.**

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**Surjit Singh, Judge ( Oral )**

Appellant, who has been convicted of offences under Sections 452 and 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months for offence under Section 452 and to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.25,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of one year for offence under Section 376 of the Indian penal Code, by the Fast Track Court (Sessions Court), has sought reversal of the judgment convicting and sentencing him, as aforesaid.

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***Whether reporters of Local Papers may be allowed to see the Judgment?***

2. Case of the prosecution, as per record, is as follows. On 13.9.2004 the prosecutrix, who is a married woman, slept at her place along-with her two minor daughters, aged 8 and 6 years, after chaining the door of the house from inside. Her husband, who is a mason, was not at home that night. Around 9.00 or 9.30 she heard the sound of the door of her house being pushed. She got up with a view to lighting a lamp, as there is no electric light in her house. When she was about to ignite the match stick, the door opened and the appellant entered the house of the prosecutrix. He caught the prosecutrix by her forearms and twisted the same. Then he loosened the string of her 'Salwar' and removed it. He severely pinched the prosecutrix on her thighs and also bit her on her cheeks and breasts due to which she got exhausted. The appellant then committed sexual intercourse with her without her consent and against her will. The daughters of the prosecutrix woke up when the appellant entered the house. They started crying when the appellant committed rape on the prosecutrix. There being no habitation nearby, nobody was attracted by the cries of the girls. The appellant after committing the crime left the house threatening that in case anybody was informed about the incident, the prosecutrix and her daughters would be done to death.

3. Next day the prosecutrix made a telephonic call to her husband and waited for his return. But he did not turn up. On the next following day, the prosecutrix went to the 'Mama' of her husband and apprised him of the incident, who then took her to the Police Station, where the FIR was lodged. The prosecutrix was got medically examined. Fainted bruises were noticed on the left breast and both the thighs and bruises on the upper lip, both external and internal sides, bluish in colour, were also

noticed. The doctor opined that there were signs of recent vaginal penetration and sexual intercourse, which were consistent with the history of the case given to him. He opined that the probable duration of the injuries was 36 to 38 hours. Medicolegal examination of the prosecutrix was conducted on 15.9.2004 at 6.30 p.m. or say after 45 hours of the occurrence.

4. Prosecutrix informed the police that while resisting the act of rape, she had caused an injury on the neck of the appellant with her nails. The police got the appellant medically examined and a bruise was noticed just below the neck, which was opined to have been caused between 36 to 72 hours. Medicolegal examination of the appellant was conducted on 16.9.2004.

5. During the course of trial, prosecution examined the prosecutrix as PW-5, her elder daughter Jyoti as PW-6. The doctor, who conducted the medicolegal examination of the prosecutrix, namely Dr. Neelam Lata, was examined as PW-9. Dr. Parveen Kumar, who conducted the medicolegal examination of the appellant, was also examined. He is PW-10. The appellant denied that he went to the house of the prosecutrix and committed rape on her. He stated that he was innocent and had been falsely implicated. He claimed that the witnesses were inimically disposed towards him, but did not disclose the cause of the alleged enmity.

6. Suggestion was thrown to the prosecutrix that on account of darkness she had not been able to recognize the rapist. She denied the suggestion and stated that the window of her house was open through which some light was entering her house and in that light she recognized the appellant.

7. Learned counsel for the appellant made two submissions. The first one is that there being no light in the house, the prosecutrix was unable to identify the rapist. His second submission is that the testimony of the prosecutrix does not inspire confidence, because she stands contradicted by material omissions in the earliest version with which she was duly confronted.

8. The argument that there being no light in the house the prosecutrix was unable to identify the rapist, cannot be accepted. The appellant is not only the resident of the same village as the prosecutrix, but also related to her from her husband side. The prosecutrix, while in the witness box as PW-5, categorically stated that the appellant is her “Jeth” (brother or cousin of the husband). The prosecutrix has stated that the window of her house was open and some light from outside was available in the room through that window. Now, when the rapist was known to the prosecutrix from before, she was in a position to easily identify him, even in very dim light entering through window, because the rapist while committing the offence was in physical touch with her and very close to her eyes when biting her cheeks and lips.

9. Learned counsel by referring to the testimony of the daughter of the prosecutrix PW-6 Jyoti, wherein she stated that due to darkness she had not been able to identify the appellant, submits that because of the darkness the prosecutrix could have also not in a position to identify the rapist.

10. As already noticed hereinabove, the rapist and the prosecutrix were so close to each other when the crime was being committed that the prosecutrix was able to identify the rapist, even in very dim light.

Therefore, the contention that the rapist could not have been identified by the prosecutrix owing to darkness is not acceptable.

11. Second submission of the learned counsel for the appellant is also without merit. Learned counsel stated that there was no mention in the FIR lodged by the prosecutrix that the window was open or light was coming through that window or that the appellant snatched the match box from the prosecutrix, when she was about to ignite it to light the lamp or a few other things like the next day she visited the house of the appellant to lodge protest and also complained to appellant's 'Bhabi' and father or that when she tried to raise alarm, he threatened that he would blow whistle, on hearing which other persons, who were waiting outside, would also come and subject her to rape. All these omissions are with regard to the secondary and unimportant details of the incident and, therefore, they need not have been got recorded in the FIR. In any case, these omissions in no way affect the credibility of the testimony of the prosecutrix, so far as her deposition about the commission of the offence of rape is concerned.

12. It is also urged by the learned counsel for the appellant that the appellant has been falsely implicated on account of enmity. There is absolutely no evidence on record suggesting that there is any enmity between the prosecutrix or the members of her family on one side and the appellant or the members of his family on the other. No doubt vague suggestion was put to the prosecutrix that she was on inimical terms with the appellant and because of that she had falsely implicated him, but she denied the suggestion.

13. It has also been submitted, though faintly, that it is a case of consensual intercourse. There is nothing on record suggesting that the

prosecutrix was a consenting party. On the contrary there is categorical statement of the prosecutrix that the appellant forcibly entered her house and subjected her to rape and before that he exhausted her and rendered her helpless by pinching her on the breasts and thighs and biting her cheeks. The plea of the appellant throughout has been that it was not he but some other person, who entered the house of the prosecutrix and committed the crime, but she could not recognize that person owing to darkness.

14. No other point has been urged. As a result of the above discussion, appeal is dismissed.

**April 17, 2007 (BC)** **( Surjit Singh )**
**Judge**